

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-2306V

(not to be published)

CLARENCE CHERRY, as
administrator of ESTATE OF MARK A.
CHERRY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 23, 2023

Special Processing Unit (SPU);
Attorney's Fees and Costs

Howard Dale Mishkind, Mishkind Law Firm Co., L.P.A., Beachwood, OH, for Petitioner.

Alexa Roggenkamp, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On December 20, 2021, Clarence Cherry, as administrator of the Estate of Mark A. Cherry, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleges that his brother, Mark A. Cherry, suffered Guillain-Barré Syndrome which meets the Table definition for GBS or, in the alternative, was caused-in-fact by the influenza vaccine he received on September 27, 2019. Petition at 1. On January 13, 2023, I issued a decision awarding compensation to Petitioner based on the Respondent's proffer. ECF No. 28.

¹ In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner has now filed a motion for attorney's fees and costs, requesting a total award of \$24,621.00 (representing \$24,219.00 in fees and \$402.00 in costs). Petitioner's Request for Attorney's Fees ("Motion") filed Mar. 19, 2023, ECF No. 33. In accordance with General Order No. 9, counsel for Petitioner represents that Petitioner incurred no out-of-pocket expenses. *Id.* at 4.

On Mar. 27, 2023, Respondent reacted to the motion, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion ("Response"), ECF No. 34. Petitioner did not file a reply thereafter.

I have reviewed the billing records submitted with Petitioner's request. In my experience, the request appears reasonable, and I find no cause to reduce the requested hours or rates.

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT Petitioner's Motion for attorney's fees and costs. I award a total of **\$24,621.00 (representing \$24,219.00 in fees and \$402.00 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel, Howard D. Mishkind.** In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this Decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.